

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

Loomis, Fargo & Co.

Employer

and

Case 3-RC-11621

**International Union, Security, Police and
Fire Professionals of America (SPFPA)**

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that Loomis, Fargo & Co. (herein called the Employer) is a Texas corporation with nationwide facilities and places of business in central and western New York, where it is engaged in the business of securely transporting valuables. Annually, in conducting its business operations, the Employer performs services in excess of \$50,000 in States other than the State of New York. Based on the parties' stipulation and the record as a

whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated that there is no collective-bargaining agreement that would bar a representation election with respect to the petitioned-for unit herein.

4. The parties stipulated, and I find, that International Union, Security, Police and Fire Professionals of America (SPFPA), (herein called the Petitioner) is a labor organization within the meaning of the Act.¹ The Petitioner claims to represent certain employees of the Employer.

5. The parties stipulated that an appropriate unit includes the following job classifications: all full-time and regular part-time drivers, security guards, messengers, techs and vault custodians performing guard duties as defined in Section 9(b)(3) of the Act, excluding office clerical employees, mechanics, professional employees, and supervisors as defined in the Act.

6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The sole issue for decision in this matter is the scope of the bargaining unit. The Petitioner seeks to represent a unit of employees employed in the stipulated job classifications at the Employer's Buffalo, New York facility, and takes the position that a single-location facility is an appropriate unit.² Although requested to do so by the Hearing Officer, the Petitioner has not taken a position as to whether it is willing to proceed to an election in any alternative unit.

The Employer takes the position that the petitioned-for unit is inappropriate, and that only

¹ Petitioner was formerly known as United Plant Guard Workers of America; its name was changed in 2000.

² There are approximately 78 employees in the petitioned-for unit.

a region-wide unit, consisting of all of its upstate New York area facilities, including Buffalo, Rochester, Syracuse, Utica, Watertown, Massena, Ithaca, Elmira, and Binghamton, and its Williamsport and State College, Pennsylvania facilities, is appropriate.³ These facilities are all included in the Employer's "upstate area."⁴

There are no collective-bargaining agreements in effect at any of the upstate area facilities.

FACTS

Background

The Employer is a national company that provides for the secure transportation of customers' valuables. In July 2003, the Employer purchased and continued the operations of the predecessor employer, Armored Motor Service of America, Inc. (hereinafter "Armored"). Armored was based in Victor, New York, and operated facilities in New York, Maine, New Hampshire, Massachusetts and Vermont. The Employer's counsel asserted at the hearing that the Employer is a successor employer to Armored within the meaning of NLRB v. Burns Security Services, Inc., 406 U.S. 272 (1972). Although Employer's counsel offered no testimony to support this assertion, the Petitioner did not take a contrary position, and stipulated that the Employer purchased Armored and operates it as a part of the Employer. There are no facts in the record which would contradict Employer counsel's assertion. The Employer continues to operate the same facilities⁵ previously operated by Armored, and continues to operate the same routes. The Employer's upstate area general manager, Kevin Hohensee, who was previously employed as a manager for Armored, maintains an office in Victor, New York, formerly Armored's primary location. Hohensee, the upstate area general manager for the

³ There are approximately 273 employees in the Employer's proposed unit.

⁴ The term "upstate area" is not a defined term in the record. However, it is used throughout the record as a reference to the facilities, named above, that are overseen by the same managers.

⁵ The Employer's facilities are variously referred to in the record as "facilities," "branches," and "terminals."

Employer, supervises the same geographic area in New York and Pennsylvania that he supervised while employed by Armored. Hohensee created Armored's route infrastructure, which is used by the Employer in essentially the same manner.⁶

Armored was the subject of two prior NLRB representation case decisions issued by the Regional Director of Region Three. In Case 3-RC-9617, a 1990 decision, the Petitioner, under its former name, sought to represent a unit of employees employed at Armored's Buffalo, New York facility. Armored asserted that the only appropriate unit was a regional one covering the employees employed at Armored's Buffalo, Rochester, Syracuse, Watertown, Utica, Ithaca, Binghamton, and Elmira, New York facilities. The Regional Director found that only a unit coextensive with Armored's central and western New York regions was appropriate. The Regional Director dismissed the petition as the petitioner would not participate in an election in the broader unit found appropriate. In Case 3-RC-10609, a 1997 decision, a different petitioner, the United Federation of Security Officers, Inc., sought an election in a single-facility unit of employees employed at Armored's Albany, New York facility. Armored's position was that only a "region-wide" unit, consisting of all of its New York State facilities and its Williamsport, Pennsylvania facility, was appropriate. The Regional Director found appropriate a unit of employees employed by Armored at its Buffalo, Rochester, Syracuse, Watertown, Utica, Ithaca, Binghamton, Elmira, Massena, Albany, Newburgh, New York and Williamsport, Pennsylvania locations.

The Employer's Operations

The Employer is divided into four geographic divisions in the United States, one of which is the "northeast" division, and another the "southeast" division.⁷ The Employer's

⁶ The record does not further elaborate as to what is meant by route infrastructure.

⁷ The record does not provide further information concerning the divisions.

corporate headquarters is located in Houston, Texas. Klaus Thelin, the Employer's president and CEO, is based in Connecticut. Dennis Doherty, who reports to Thelin, is the Employer's northeast division president. Doherty's office is located in Boylston, Massachusetts. The Employer's upstate New York facilities are included in the Employer's northeast division. A number of managers or directors within the northeast division, including Hohensee, report to Doherty.⁸ Hohensee, who is in Victor, New York, testified that he supervises the same area he previously supervised for Armored, namely, Buffalo, Rochester, Syracuse, Utica, Watertown, Massena, Ithaca, Elmira, and Binghamton, New York, and two offices in Williamsport, and State College, Pennsylvania.⁹ The Employer also continues to operate Armored's Albany, Newburgh, and Plattsburgh, New York facilities¹⁰.

The Buffalo, Rochester, and Syracuse, New York terminals are "vaulted operations"¹¹. The Williamsport, and State College, Pennsylvania, facilities, known as satellite facilities, are "non-vaulted operations", located in smaller cities. Rochester, the closest branch to Buffalo, is located 70 miles from Buffalo; Syracuse is 140 miles from Buffalo; State College, Pennsylvania is 150 miles from Buffalo; and Massena, the division's facility located furthest from Buffalo, is 300 miles northeast of Buffalo.¹² Hohensee's office, in Victor, New York is located in between Buffalo and Syracuse – about 18 miles southeast of Rochester, New York.

Kathleen Jenks is the human resource manager for the upstate New York area. Jenks reports to Hohensee on human resource issues and also to Sandra Strong.¹³ Jenks works in Buffalo, New York, where she retains the personnel files for all upstate area employees.

⁸ Except as noted, the record does not disclose the names of the other managers or directors.

⁹ The State College, PA facility did not exist until some time after 1997.

¹⁰ The record does not specify which Employer division the Albany, Plattsburgh, and Newburgh, New York facilities fall under. Those facilities do not fall under Hohensee's area of supervision.

¹¹ A "vaulted operation" is a terminal facility with a vault on site to secure the valuables transported by the Employer.

¹² No estimate was given for the distance between Buffalo and the other terminals.

¹³ The record does not disclose Strong's title or duties or explain for what purpose Jenks reports to her.

Each facility is under the supervision of a branch manager, responsible for the day-to-day operations of the facility, including the assignment of personnel to routes, scheduling, vehicle operations, profit and loss issues, and vault and cash room operations. Michael Foreman is the Buffalo, New York branch manager. Foreman is assisted by an operations manager,¹⁴ operations supervisor, and vault supervisor. At the hearing, the parties stipulated that branch manager Foreman, vault supervisor Kevin Sikorski, and the operations manager (when the position is occupied), are supervisors within the meaning of Section 2(11) of the Act.

Upstate area general manager Hohensee, who is in Victor, New York, testified that he approves all discharges, layoffs, overtime, and staffing decisions in the upstate area. Hohensee is responsible for ensuring that each terminal is adequately staffed with licensed employees. If a terminal is short staffed, employees are temporarily transferred to another terminal to maintain the route schedules. Under Hohensee's direction, area branch managers assign the particular employee to the other terminal. Branch managers may make minor changes to the routes, such as adding a customer to a route. Hohensee decides any major route changes.¹⁵ Hohensee alone has authority to approve equipment interchange between the terminals.

The Employer advertises for employees for the Buffalo, New York facility in Buffalo newspapers, on job posting boards, and with the New York State Division of Labor. Upstate area human resource manager Jenks places the advertisements and postings for the various branches. A single advertisement or posting may seek employees for one or more Employer facility. The same advertising language is used for all branches and the advertisements may or may not specify the location of the branch where staff is needed. Jenks is the contact person listed in all advertisements seeking employees for the Buffalo, New York facility. After a job applicant

¹⁴ This position is currently vacant at the Buffalo facility.

¹⁵ Hohensee testified that Buffalo branch manager Foreman, is "involved" in making major route changes, but the record does not elaborate on Foreman's involvement in this regard, other than that Foreman "looks at the route."

applies, he or she submits to a background check. Jenks initially interviews all applicants, who are then interviewed by staff at a specific branch. Although Buffalo branch manager Foreman interviews job applicants and has input into hiring decisions, he does not make the final hiring decision. Foreman testified that certain job applicants, qualified in his view, were not hired, and he was not informed why they were not hired.

Promotional opportunities, such as a promotion from a road position to a vault position, are posted.¹⁶ Both Jenks and Foreman interview candidates for promotion and are involved in making the decision. However, promotion decisions are not final unless Jenks has signed off on the decision, and it is approved by Hohensee.

Buffalo branch manager Foreman does not have the authority to discharge employees. The Employer follows a progressive discipline policy. Foreman testified that if an employee is to be disciplined, Jenks reviews the circumstances first, and is aware of any written employment action that is placed in an employee's file. Other than for minor infractions, such as tardiness, which Foreman handles alone, Foreman discusses with Jenks whether an employee's discipline should be a written reprimand or verbal warning. Foreman possesses the authority to send an employee home for disciplinary reasons. Foreman also approves employee vacation requests, and is authorized to ask employees to work weekends. Foreman schedules employees. In doing so, Foreman attempts to accommodate them in terms of the runs and days they prefer to work and the employees they like to work with, by posting notices and securing volunteers. He seeks volunteers to work on weekend or special routes, and has never encountered a situation where no one has volunteered. Foreman testified that hypothetically, he would not force someone to work if he or she were not scheduled. Rather, he would perform the job himself, seek volunteers from the Rochester facility, or another facility, or cancel the run. Foreman testified that if an employee

¹⁶ The record is silent concerning where these postings occur.

calls in sick, dispatch, a vault lead or a supervisor will arrange for the run to be covered.

New employees must complete New York State's 47- hour guard training requirements within 180 days of an offer of conditional employment. Employees from all branches receive this week-long training at a centralized training school located in Rochester, New York. Training is conducted by a company trainer. Employees are also required to maintain a valid firearms permit. Generally, employees achieve their annual firearms recertification at their respective branches by working with the company firearms instructor, David Lenane. Employees in New York and Pennsylvania are required to comply with their particular state's licensing requirements. A Federal reciprocity law enables states to honor other states' licenses. Thus, Pennsylvania licenses are valid and honored in New York.

All employees in the Employer's northeast division and upstate New York area wear the same uniforms¹⁷ that come from the same supplier, are subject to the same work rules, and share the same life and medical insurance benefits, holidays, vacation and sick days. Pay scales are the same throughout the upstate area. The Employer's employee handbook and employee operations handbook apply to the all of the Employer's employees nationally. The employee handbook sets forth numerous employment and personnel policies including, but not limited to, disciplinary offenses and procedures, leave, firearms and testing policies. The employee operations handbook describes such items as driving and firearm rules, vehicle security and equipment rules, attendance, pick-up and delivery rules and rules of conduct. There are no employee operations policies or employee conduct policies that apply only to the Buffalo, New York facility.

¹⁷ The uniforms are the same throughout the country. Certain employment benefits may also be the same throughout the country.

Employees generally live in the city where the terminal they work at is located.

Employees assigned to work in the Buffalo, New York branch live in Buffalo; those assigned to work in the Syracuse, New York branch live in Syracuse. On a typical day, a Buffalo employee reports to the Buffalo facility, punches in and reports to dispatch for his or her assignment, which changes on a daily basis. Rochester and Syracuse each have their own dispatch as well.

According to the Employer's employee operations handbook, normal armored vehicle operations require a basic two-member crew, a custodian (also called a messenger) and a driver. The duties of the crew members are described in the operations handbook. The custodian/messenger is in charge of the route and is responsible for all crew activities, and the accountability of the cargo. The driver is responsible for the safe handling of the vehicle. The guard, where assigned, provides protection to the custodian/messenger. The driver prepares the vehicle for the route, while the custodian or messenger checks the cargo for the route. Cargo is then loaded onto the vehicle. An employee may load cargo to be delivered to customers, or pick up cargo from customers. At the end of the route, Buffalo employees return to Buffalo. Any cargo picked up is secured in the Buffalo vault by Buffalo vault employees.

Operationally, on a daily basis, vehicles from both the Rochester and Syracuse facilities are dispatched out of the Buffalo facility. There are "meet points" along the Employer's routes where two crews arrive at the same location to exchange cargo. Rochester, Buffalo, and Syracuse facility employees meet or interact with each other at the Buffalo terminal, by exchanging cargo, loading and unloading cargo, and completing paperwork. When the Syracuse and Rochester employees work at the Buffalo terminal, they are under Buffalo branch manager Michael Foreman's supervision. Certain shipments are packaged in Buffalo for other locations. All the cargo for Wyoming County Bank, which has branches in both Buffalo and Rochester, is

packaged out of Buffalo. The Buffalo facility packages and consolidates all returns for that customer. Every week, a Buffalo crew travels to the Rochester terminal to exchange cargo. When the Buffalo crew works in Rochester, it is under the supervision of Rochester branch manager Dan Unz. There are many occasions when a particular stop is serviced, that is, loaded or unloaded, by different branches on different days. Route stops are frequently changed from one branch to another depending on customer needs. The record demonstrates, for example, that the Home Depot, a customer in Painted Post, New York, was serviced by the Elmira, New York branch one day, and the Rochester, New York branch on another day. The record reveals an instance where a Massena, New York crew met a Syracuse, New York crew at a particular point (the St. Lawrence Center), and worked together to service a customer. Specifically, since two guards are required inside the facility, a messenger from the Syracuse terminal and a messenger from the Massena terminal, worked inside together while the drivers guarded the trucks.

Seventy-three driver "route sheets" covering a 90-day period (from March 2005-to May 2005) were introduced by the Employer at the hearing. Area general manager Hohensee testified that the documents represent 73 examples of employees from either Buffalo or Syracuse working together on the same truck, at the same time, with Rochester-based employees, out of the Rochester facility. For example, a driver domiciled in Buffalo worked with a messenger/custodian or guard domiciled in Rochester. Employees from other branches volunteer to work in Rochester in lieu of performing their normal routes, on a temporary basis, perhaps for a week at a time. While an employee from another branch works in Rochester, he or she is paid a flat rate of \$150.00 per day and a \$35.00 per diem for meals. As noted above, guards are supervised by the manager of the branch in which they are working. Thus, when a Buffalo driver makes a stop in Rochester, or is in transit in Rochester, he or she is supervised by the Rochester branch

manager, Dan Unz. Hohensee testified that Rochester currently has the greatest need for employees. The Employer is seeking to hire for that location, which would reduce the need to use employees from other branches.

ANALYSIS

Unlike the public utility industry, where the Board has favored system wide units on public policy grounds, the Board, contrary to the assertion in the Employer's post-hearing brief, does not presume system wide or regional units in the armored car industry to be appropriate. Rather, a case-by-case analysis is required. American Courier Corp., 184 NLRB 602 (1970); Purolator Courier Corp., 265 NLRB 659 (1982).

Outside of the public utility industry, a single-facility unit is presumptively appropriate unless it has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity. J&L Plate, 310 NLRB 429 (1993); Dixie Belle Mills, Inc., 139 NLRB 629, 631(1962). The Board "has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence ...illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to show that 'the separate interests' of the employees sought have been 'obliterated.' " Trane, 339 NLRB No. 106 (2003), citing Petrie Stores Corp., 266 NLRB 75, 76 (1983).

To determine whether the presumption has been rebutted, the Board looks at such factors as control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical location; and bargaining history, if any. See Esco Corp., 298 NLRB 837, 839 (1990), and cases cited therein. In performing the above analysis, I find that the

Employer has rebutted the single–facility presumption. For the reasons explained below, I find that the petitioned-for unit is not an appropriate unit.

Initially, I note the Employer’s centralized control over operational and labor and personnel functions, and the similarities in the terms and conditions of employment for all upstate-area employees. Pay scales are the same throughout the upstate area and all employees wear the same uniforms. All employees in the upstate area share the same fringe benefits, including life and medical insurance, holidays, vacation, and sick days. Nationally, the Employer’s employees are subject to the same employee handbook and employee operations handbook which set forth comprehensive employment policies. The employee handbook sets forth the progressive disciplinary procedure, including work rules and infractions with resulting disciplinary consequences. Numerous employment policies are also described, including absenteeism and leave policies, and firearm permit rules. The employee operations handbook covers rules on operating vehicles, cash and security procedures, loss prevention, work schedules, security controls, cargo delivery rules, and crew configuration. It is undisputed that there are no employment or operations policies unique to the Buffalo, New York facility or its employees.

Operationally, route and crew configurations are controlled by Hohensee, the upstate area general manager in Victor, New York, or divisional-level management. Only Hohensee can approve major route changes and equipment exchanges between facilities. The employee operations handbook indicates that normal armored vehicle operations require a basic two-member crew, a custodian/messenger and a driver. The handbook indicates that there are certain runs that require an additional driver and/or guard; and with express approval from the divisional security department, certain runs require only one crew member. Thus, it is the divisional

security department¹⁸, not the local branch manager, that must approve a change in the crew configuration from two to one.

Personnel matters are administratively centralized. The personnel files for all upstate areas employees are kept in Buffalo, New York. Training for all upstate employees is integrated and centralized. All upstate employees fulfill their New York State-mandated guard training requirements at a central school in Rochester, New York. Although employees generally receive firearms training at their particular branch, there are occasions when employees will receive this training at other branches, and the firearms training is conducted by the company trainer David Lenane. Lenane's office is located in Victor, New York. The same text is used for employment advertisements, which may seek employees for more than one terminal, and the upstate area human resource manager who is located in Buffalo, is the contact person for Buffalo facility applicants.¹⁹

The existence of centralized administration and control of labor relations policies and procedures is not dispositive in overcoming the single-facility unit presumption. However, in cases where those factors are found not to be dispositive, there was sufficient local autonomy to support the single location presumption. See e.g., New Britain Transportation Co., 330 NLRB 397, 398 (1999), citing Rental Uniform Service, 330 NLRB 334 (1999) and D&L Transportation, Inc., 324 NLRB 160, 161 (1997).

Here, the record reveals only minimal local autonomy. While the Buffalo terminal is overseen by its own branch manager, Michael Foreman, his authority is constrained with respect to labor relations by the upstate area general manager, Hohensee, and the upstate area human resource manager, Jenks. While branch manager Foreman possesses authority over the day-to-

¹⁸ The record does not disclose where the "divisional security department" is located; however, the northeast division president Doherty maintains an office in Boylston, Massachusetts.

¹⁹ The record does not disclose whether Jenks is the contact person for hiring at other facilities.

day matters at the Buffalo terminal, he lacks substantial autonomy over labor relations and personnel policies and procedures. All policies and procedures regarding wages and terms and conditions of employment, as well as work rules, emanate nationally²⁰, and are uniform throughout the upstate area. Buffalo branch manager Foreman is involved in the hiring process by interviewing applicants; however, the record reveals that Foreman's interview of the applicant is in addition to Jenk's interview of the applicant and that Foreman does not make the hiring decision. As an example of his lack of autonomy over hiring, Foreman testified that an applicant who he viewed favorably was not hired, and the reasons for the decision were not communicated to him. While Foreman does possess a level of decision-making authority over promotions, Jenks, the upstate area human resource manager and Hohensee, the upstate area general manager, must sign off on and approve of each promotional decision. The upstate area general manager Hohensee makes all discharge decisions.²¹ Foreman's authority is limited to lesser discipline and he consults with the upstate area human resources manager, Jenks who normally reviews disciplinary write-ups before they are given to employees or placed in an employee's file. Further, except for minor infractions such as tardiness, Foreman discusses with the upstate area human resource manager Jenks, the level of discipline an employee should receive under the progressive discipline policy. Upstate area general manager Hohensee approves overtime, layoff and staffing decisions.

Thus, it is evident that final authority in the major employment decisions rests with upstate area general manager Hohensee and upstate area human resource manager Jenks, while Buffalo branch manager Foreman's authority is limited to the more routine functions of

²⁰ Houston, Texas is the Employer's corporate headquarters.

²¹ The employee handbook confirms the lack of local autonomy and provides that while terminations can be based on the opinion of the branch or general manager, it also requires the approval of the division president. Foreman's testimony does not reveal that he has even given an opinion on any termination.

scheduling and minor route assignments. Under similar circumstances, the Board has found a single facility unit of security guards to be inappropriate. Sentry Security Services, Inc., 230 NLRB 1170 (1977) (single facility unit found inappropriate where overtime was approved in advance by centralized management and written reprimands were not placed in an employee's file without approval of the central office). I find that control of labor relations is highly centralized. This lack of local autonomy in the labor relations area is a factor which militates heavily against a finding of an appropriate single facility unit. Wackenhut Corporation, 213 NLRB 293 (1974).

The record also reveals evidence of functional integration and employee contact involving certain upstate facilities, which demonstrates a shared community of interest among employees from different facilities. As already noted, equipment is exchanged between facilities. In order to service customers fully, vehicles from the Rochester and Syracuse terminals are dispatched on a daily basis from the Buffalo terminal, and crews from both Rochester and Syracuse work at the Buffalo facility in loading, unloading or exchanging cargo. Route stops may be changed from branch to branch depending on customer service needs. Hohensee testified that a particular stop is frequently serviced (loaded or unloaded) by different branches on different days. Certain customers may require crews from different terminals to work together to perform services adequately, such as when the St. Lawrence Center job required that crews from Massena and Syracuse meet to service the customer.

Employees at the Buffalo terminal perform the packaging of certain shipments for the Rochester branch. All the packaging and returns for Wyoming County Bank, which has branches in both Buffalo and Rochester, are consolidated in Buffalo, even though the customer is serviced by both the Rochester and Buffalo terminals. On a weekly basis, a Buffalo crew travels to

Rochester to exchange cargo with the Rochester crew. When the Buffalo crew works in Rochester, it is supervised by the Rochester general manager, resulting in overlapping supervision of the crews.

Evidence of employee interchange also indicates that Buffalo facility employees share a community of interest with employees at other facilities. Employees from both the Buffalo and Syracuse branches work for up to a week at the Rochester branch, making pick-ups and deliveries to customers of the Rochester branch to cover for a shortage of employees in Rochester. Importantly, while in Rochester, the Buffalo and Syracuse employees are supervised by the Rochester branch manager.

Petitioner argues in its post-hearing brief that the case herein is nearly identical to the record in the Decision and Direction of Elections in Guardian Armored Assets, LLC (Case 7-RC-22665), in which the Regional Director found that the single-facility presumption had not been rebutted. However, in that case, there was evidence that the local managers possessed more autonomy. For example, local managers completed employee performance evaluations. Moreover, unlike the instant case, the evidence of interchange in that case was “wholly non-specific,” and consisted of two temporary transfers in two years, the last one involving six or seven drivers transferred out for three days.²²

By contrast, in the instant case, the Employer offered documentary evidence, in the form of driver route sheets, of approximately 70 examples of mixed crews working together during a 90-day period. These route sheets represent approximately 23 transfers per month, involving employees from the Buffalo or Syracuse terminals working temporarily at the Rochester facility.

²² This case is also distinguishable from the Decision and Direction of Election in Loomis, Fargo & Co. (Case 16-RC-10609), issued in 2004, involving the same Employer operating in Texas. In that case, the Regional Director found a single facility unit appropriate, based in part on the limited and insufficient evidence of interchange. Moreover, unlike the instant case, the branch manager there possessed control over employment decisions including recommending discipline and vetoing hiring decisions.

Moreover, guards in transit are supervised by the branch manager of the branch in which they are working, representing true interchange. New Britain Transportation Co., 330 NLRB 397, 398 (1999) (interchange exists if a significant portion of the workforce is involved and the workforce is actually supervised by the local branch).

The examples demonstrate that approximately 20 percent of the Buffalo workforce traveled to Rochester to work temporarily.²³ As noted in the Employer's post-hearing brief, this number would be even higher if additional interchange evidence is added, such as the weekly Buffalo crew traveling to, and working in Rochester. The Board has found a similar level of interchange to be significant in other cases. See, e.g., Orkin Exterminating Co., 258 NLRB 773, 774 (1981) (20 temporary transfers over 9 months, involving 49 employees); Petrie Stores Corp., 266 NLRB 75, 76 (1983) (temporary transfers of 3 to 4 employees per week); Sol's, 272 NLRB 621, 623 (1984) (10 to 15 temporary transfers per month, among 63 employees at 5 locations); Globe Furniture Rentals, 298 NLRB 288 (1990) (20 temporary transfers among 5 locations, over 28 months). While I recognize that voluntary interchange is afforded less weight in determining whether employees from different facilities share a community of interest, such interchange of approximately 20 percent of the Employer's workforce is not an insignificant factor particularly when considered together with the showing of a shared community of interest among different Employer facilities. See Waste Management Northwest, 331 NLRB 309 (2000) (Board found two factors favoring a single facility presumption, geographic distance and minimal interchange,

²³ Petitioner, in its post-hearing brief, argues that the Employer's evidence is insufficient data presented in the aggregate not as a percentage of total employees, and that the Employer failed to provide the total number of assignments in 90 days. However, the data provided shows that, (after accounting for multiple trips by the same employee), approximately 15 different Buffalo employees out of 78 total Buffalo employees, worked in Rochester over the 90-day period, and that more than 50 mixed crews of Buffalo and Rochester employees and approximately 15 mixed crews of Rochester and Syracuse employees, operated together for the Employer over a 90-day period. While the record does not disclose the total number of routes and crews which operate on a daily or monthly basis, the evidence still allows one to determine that a significant portion of the Buffalo, New York workforce, (approximately 20 percent), was involved in temporary transfers during the 90-day period.

were outweighed by other factors, such as lack of local autonomy, coordination and interaction among employees, and centralized control over labor policies); Trane, 339 NLRB No. 106 (2003) (Board, in finding the employer rebutted the appropriateness of a single facility unit, reversed the Regional Director who had relied heavily on the geographic distance and the employer's failure to present specific evidence of employee interchange). Even if the level of interchange herein is, as Petitioner argues in its post-hearing brief, not as high as that described in cases such as Purolator Courier Corp., supra, the Board in the cases cited above has found the level of interchange present in this case to be substantial. See also Sentry Security Services, Inc., 230 NLRB 1170 (1977).

Further, while the Employer's terminals are geographically separated, I note that in the armored car industry, this factor is not dispositive and is outweighed by the other factors present herein. Dayton Transport Corporation, 270 NLRB 1114 (1984) (Board found single-facility presumption rebutted, contrary to the Regional Director, who relied on, inter alia, the wide geographic separation of the terminals). See also American Courier Corporation, 184 NLRB 602 (1970); Purolator Courier Corp., 265 NLRB 659 (1982).

Finally, the record establishes that employees throughout the upstate area have identical skills and job duties. Thus, all employees are required to fulfill the same New York State guard requirements through common training by the same company trainer. The employee operations handbook, which applies to all of the Employer's employees, delineates in Section 2, the composition of vehicle crews and their respective duties. Moreover, the temporary transfer evidence demonstrates that Buffalo and Syracuse employees are qualified to substitute for one another as needed, and can fill in for and perform the same jobs as Rochester employees, driving

the same vehicles and servicing the same customers. This evidence of uniformity of skills and duties militates against a single facility unit. R & D Trucking, 327 NLRB 531 (1999).

Under the circumstances presented herein, and in view of the centralized regional control of labor relations, the lack of local autonomy, evidence of employee interchange and contact, and the common wages, benefits, employment policies, and skills, as well as the functional integration among the Buffalo, Rochester and Syracuse facilities, I find that the Buffalo, New York facility lacks a separate identity, and that the Employer has effectively rebutted the presumption in favor of the petitioned-for single location bargaining unit.

CONCLUSION

Based on the record as a whole, I find that the petitioned-for unit encompassing only the Buffalo, New York facility is inappropriate. At the conclusion of the hearing, Petitioner took no position, when asked by the Hearing Officer, as to whether it would proceed to an election in a broader unit. Petitioner's brief does not indicate whether or not it would proceed to an election in an alternate unit. Accordingly, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. The Board in Washington must receive this request by **July 7, 2005**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlrb.gov.

DATED at Buffalo, New York this 23rd day of June 2005.

/s/Helen E. Marsh
HELEN E. MARSH, Regional Director
National Labor Relations Board – Region Three
Thaddeus J. Dulski Federal Building
111 West Huron Street - Room 901
Buffalo, New York 14202